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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte COLIN J. WEST and MICHAEL A. TAYLOR

Appeal 2009-009371
Application 10/535,493
Technology Center 1700

Decided: June 11, 2010

Before EDWARD C. KIMLIN, TERRY J. OWENS, and
PETER F. KRATZ, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-23. We have jurisdiction pursuant to 35 U.S.C. § 6. An oral hearing was held on April 13, 2010.

Appellants' claimed invention is directed to a method of joining components together, such as aircraft structural components, with a sealed joint between mating surfaces using a polysulphide sealant and a product assembly formed thereby.

Claims 1 and 22 are illustrative and reproduced below:

1. A method of assembling components together in sealed relationship, the components have respective mating surfaces, the method including the steps of:

applying to at least one mating surface a layer of polysulphide sealant and allowing the sealant to cure;

after allowing said sealant to cure, bringing together the mating surfaces; and

applying a pre-determined pressure therebetween for a pre-determined period whereby to bring about a sealed joint between the two mating surfaces.

22. An assembly of two components for forming a fluid-tight seal together, each component having a mating surface for sealing to a mating surface of the other component, said assembly comprising at least one said mating surface having a layer of polysulphide sealant cured thereon prior to assembly.

In addition to reliance on alleged admitted prior art (Specification 1), the Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

John	3,022,870	Feb. 27, 1962
Smith	3,659,896	May 2, 1972
Lester	3,904,038	Sep. 9, 1975

Cheron ¹	FR2498871	Jul. 30, 1982
Hanson	4,697,970	Oct. 6, 1987
Ishihara ²	JP11-72999	Mar. 16, 1999

Akmal, "Handbook of Adhesive Technology", pp. 319-327 (1994)
Appellants Specification Page 1 "The admitted prior art"

Appellants provide additional evidence in the form of a Declaration under C.F.R. § 1.132 by Dr. Steven Harris (App. Br., Evid. Appdx.).

The Examiner maintains the following grounds of rejection.

Claims 22 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by John. Claims 1-10, 14, and 20-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson. Claims 11-13, 14(11-13), and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson, and further in view of Smith. Claims 16-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson, and further in view of Akmal. Claims 1, 3-10, 14(1 and 3-10), and 20-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art (Specification page 1) in view of John. Claims 2 and 14 (2) are rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Lester. Claims 11-13, 14(11-13), and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Smith. Claims 16-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Akmal. Claims 22 and 23 are rejected on the ground of

¹ Our references to Cheron are to the English language translation of record.

² Our references to Ishihara are to the English language translation of record.

non-statutory obviousness-type double patenting over claims 1 and 22 of copending Application No. 11/020,873.

We affirm the Examiner's prior art rejections as applied to claims 22 and 23 generally for reasons set forth by the Examiner in the Examiner's Answer, and as further discussed below. We reverse the Examiner's prior art rejections as applied to claims 1-21. We affirm the provisional obviousness-type double patenting rejection. Our reasoning follows.

Anticipation Rejection

At the outset, we note that Appellants do not separately argue dependent claim 23; hence, we focus on independent claim 22 in deciding this appeal as to product claims 22 and 23.

The Examiner has found that:

John discloses an assembly which forms part of a fuel storage system for an aircraft which comprises two components assembled and sealed together in a fluid-tight relationship each component having a mating surface sealed to the mating surface of the other component with a layer of cured polysulphide sealant therebetween (the Figure and Column 1, lines 10-20 and Column 2, lines 63-72 and Column 3, lines 1-23 and Column 4, lines 41-57).

Ans. 3.

Appellants do not specifically dispute the above-reproduced factual determinations of the Examiner (*see generally* Appeal Brief and Reply Brief).

As for the manner of making the assembly with "at least one said mating surface having a layer of polysulphide sealant cured thereon prior to assembly" as called for in product-by-process claim 22, the Examiner

basically asserts that John discloses all of the structurally defined limitations of the assembly set forth in representative claim 22 and under these circumstances it is appropriate that Appellants bear the burden to establish that the manner of making the assembly, as recited in claim 22, results in a patentable difference in Appellants' product over that produced by John (Ans. 3-4).

Appellants produce evidence and counter the Examiner's rejection position by urging that the claimed pre-assembly curing of the sealant, as opposed to post assembly curing as allegedly taught in John, yields an assembly that has: (1) a thicker sealant layer; (2) a layer that extends more uniformly; (3) sealant in the fastener area; and (4) a sealant layer that is in compression normally as set forth in the Declaration of Dr. Harris (Decl.) (App. Br. 11, 14, and 15; Decl. paras. 28-31).

Notwithstanding Appellants' rebuttal evidence, the Examiner maintains the rejection asserting:

The declaration does not demonstrate via any quantitative result any of the above differences. Further, it is unclear how this conclusion is reached in view of the teachings in John that (1) the cured sealant layer does not flow (Column 2, lines 66-71) and the cured sealant layer does not squeeze out from the sealant area (Column 1, lines 32-37 and Column 3, lines 21-23), (2) the cured sealant is uniformly present as evidenced by forming a continuous sealing layer capable of withstanding the usual air pressures for aircraft (Column 1, line 68 to Column 2, line 2), and (3) the cured sealant forms a sealant area in the area of fasteners (Column 3, lines 15-23).

Ans. 16.

Consequently, a principal issue before us with respect to the Examiner's rejection of product claims 22 and 23 is: has the Examiner

reasonably established that John anticipates representative claim 22 when reconsidered in light of Appellants' arguments and the additional opinion evidence presented in the Declaration of Dr. Harris?

We answer this question in the positive and we affirm the Examiner's anticipation rejection of claims 22 and 23.

As required by representative claim 22, John discloses an assembly of two components (such as metal plates as depicted with legends in the sole drawing Figure) with a polysulphide polymer sealant interposed between mating surfaces of the plates.

John discloses that a mixture including a liquid polysulphide polymer has a curing agent added thereto and the composition is cured "to an effectively non-plastic state" while placed between two polyethylene sheets (col. 2, ll. 40-71). John teaches that the produced sealant film can be removed from one of the polyethylene films and adhered to a metal (aluminum) sheet surface using slight finger pressure, the other polyethylene film stripped, and then the other metal sheet placed over the uncovered face of the sealant film (col. 3, ll. 7-12). When the two metal layers are mechanically combined or assembled, such as with rivets or bolts, John teaches that the sealant film adheres to both metal surfaces and resists forces that would tend to squeeze the sealer from the seam area (col. 3, ll. 12-23).

As stated by our predecessor reviewing Court in *In re Brown*, 459 F.2d 531, 535 (CCPA 1972):

[W]hen the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claimed in a product-by-process claim, a rejection based alternatively on either section 102 or section 103 of the statute is eminently fair and acceptable. As a

practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith.

Consequently, the disclosure of John supports the Examiner's assertion that an assembly made in accordance with the teachings of John would reasonably be expected to result in a structure corresponding to the assembly called for by product-by-process claim 22.

Turning to the Declaration of Dr Harris under 37 C.F. R. § 1.132, Dr. Harris states, inter alia, that:

12. During the known and conventional sealant process as disclosed in John, sealant is applied in the liquid phase to one of the mating surfaces which is then brought into contact with the other mating surface and they are fastened together within the working time of the sealant, i.e., prior to its becoming cured. The joint is then left undisturbed until a significant level of cure is attained.

13. The consequence of post-assembly curing is that the resulting layer of sealant will be thin, owing to the mating surfaces being fasted together with the sealant still in the liquid phase being squeezed out from between the surfaces.

14. The post-assembly cured sealant will also be under slight tension due to the inherent shrinkage occurring during curing process.

15. The post-assembly cured sealant will be almost completely absent from area immediately surrounding fasteners (holding the two mating surfaces together) because the fasteners hold the areas tightly against one another, thereby excluding sealant therefrom.

16. With the cured sealant assembly process, there is a thicker layer of sealant in the vicinity of fasteners, there is no

metal-to-metal contact (which could otherwise take place with the uncured sealant being squeezed out of the space between the two contact surfaces), especially in the vicinity of the fasteners. The uncured sealant is simply not stable enough to resist squeezing of the sealant out of the joint when the joining pressure is applied. In the present invention, because the sealant is fully cured, it does not squeeze or flow under assembly pressure.

Harris Declaration, paras. 12-16.

In paragraphs seventeen through twenty-eight of the Declaration, Dr. Harris opines on why it is believed that John does not teach pre-assembly curing based on the express disclosure in John pertaining to completely curing the polysulphide sealant. In this regard, Dr. Harris opines that the complete curing described in the 12 hour curing time disclosed in John would, at most, represent a 50 to 70 percent cure whereas the exemplified 14 day cure set forth in Appellants' Specification would result in a sealant that is approximately 99 percent cured (Declaration, paras. 18 and 19).

In paragraph twenty-nine, the submitted Declaration under 37 C.F. R. § 1.132 of Dr. Harris states, inter alia, that:

Numerous differences between the resultant assembly when accomplished in the manner of the John patent and when accomplished in the manner of claims 1 and 22 have been noted, i.e., (a) the assembled components utilizing pre-assembly curing in accordance with the presently claimed invention have a thicker sealant layer (whereas in John, the un-cured sealant will be squeezed out from between the faying surfaces); (b) the cured layer extends more uniformly across the mating surfaces; (c) there is also a sealant layer in the area of the fasteners (whereas in the post-assembly cured process of John, the sealant layer will be squeezed out under the fasteners allowing metal-to-metal contact); and (d) as a result of the pre-assembly

curing, the sealant layer, after assembly, will normally be in compression (whereas due to shrinkage during curing, the sealant layer in John will be under tension).

Consequently, Dr. Harris concludes that the assembly formed via pre-assembly curing as required by Appellants' claim 22 is substantially different from the assembly of John (Declaration, para. 31).

Of course, it goes without saying that it is within the province of the Board to weigh declarations expressing opinions as to fact and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004); *cf. In re Thompson*, 545 F.2d 1290, 1295 (CCPA 1976) (affidavit fails if it recites conclusions without reciting the underlying facts to support those conclusions).

Here, the evidence adduced by the Examiner (John) expressly indicates that the sealant is cured to a non-plastic (non-flowing) state prior to assembly, and the cured sealant resists forces that would serve to squeeze the sealant from the seam area during the mechanical assembly of the metal sheets using bolts or rivets, in seemingly direct contravention to the conclusions reached by Dr. Harris. In this regard, Dr. Harris presents no comparative evidence based on tests showing that the assembly made in accordance with the disclosure of John with a twelve hour cure time would not behave as John discloses it would. After all, the issued U.S. Patent description of John carries a strong presumption of correctness and would require substantially irrefutable corroborated evidence to establish otherwise.

In addition, the opinion presented by Dr. Harris appears to correlate or conflate the description of the prior art referred to in John with the disclosed invention of John (Compare Declaration paragraphs 10-16 with Declaration paragraph 29). In this regard, John describes prior art wherein a liquid sealant is applied to a mating surface and wherein a sealant may be squeezed from a seam area during post-assembly curing (col. 1, ll. 26-39). Correspondingly, a liquid phase is referred to in paragraphs 10, 12, and 13 of the Declaration as being attributed to John. However, the disclosed invention of John is described as using a cured sealant film wherein the cured non-plastic sealant film is applied to a mating surface before assembly and whereby sealant flow from a seam area is forestalled during the assembly operation (col. 1, l. 54 – col. 4, l. 57).

Further, the opinion presented by Dr. Harris appears to rely on Appellants' exemplified embodiments wherein a 14 day curing time under specified temperature and humidity conditions of a particular sealant (PR-1770C-12) and a specified activator was employed to achieve a fully cured sealant to assert a ninety nine percent cure for Appellants' claimed sealant (Declaration, paras. 17 and 19; Spec., p. 6). Then, Dr Harris compares that disclosed embodiment of Appellants with the disclosed embodiment of John employing a twelve hour cure time to opine about a lower curing of the sealant being obtained in John without explaining how the differences in the sealants, activators, and curing conditions of Appellants' exemplified embodiment and those of John are taken into account.

Given the above and the fact that representative claim 22 does not require use of the sealant (PR-1770C-12), the activator, cure time, and/or cure conditions, as specified in Appellants' exemplified embodiment

referenced in the Declaration, we agree with the Examiner that the Declaration of Dr. Harris does not outweigh the evidence furnished by the Examiner (John) and establish a product difference in the claim 22 assembly based on the broadly claimed manner of preparing the assembly set forth in product-by-process claim 22.

Moreover, Dr. Harris's employment of the particular Specification embodiment and the above-noted characterization of John to allege a product distinction for a product made in accordance with the breadth of claim 22 over that of John based on opined differences in cure layer uniformity and compression characteristics are similarly unpersuasive and entitled to little weight because of the conclusory nature of the opinions provided by Dr. Harris in the face of the teachings of John, as discussed above (*see* Declaration, para. 0029).

We agree with Appellants that the Examiner's reference to page 8 of Appellants' Specification with respect to alleged sealant curing times employed by Appellants incorrectly confuses Appellants' disclosed bonding times for a cured sealant to a mating surface with the time employed for the initial curing of the sealant (Reply Br. 4; Ans. 13-14). However, we disagree that this oversight by the Examiner materially affects the Examiner's anticipation presentation to the extent such may have been asserted by Appellants. In this regard, Appellants' arguments are primarily directed to the asserted differences set forth in the Declaration of Dr. Harris as a product distinction, which we have found unpersuasive of a product difference of representative claim 22 over the disclosed assembly of John based on the argued product-by-process limitation (App. Br. 14-15; Reply Br. 3-12).

On this record, the Examiner has reasonably established that John anticipates representative claim 22 when reconsidered in light of Appellants' arguments and the additional opinion evidence presented in the Declaration of Dr. Harris.

Obviousness Rejections

We affirm the Examiner's obviousness rejections over John in view of Cheron, Ishihara, or Hanson, and over the admitted prior art taken with John as applied to product claims 22 and 23 for the reasons set forth by the Examiner, as further discussed above with respect to the anticipation rejection over John. After all, anticipation is the epitome of obviousness.

However, our disposition of the Examiner's obviousness rejections with respect to the appealed method claims is another matter.

We start with the obviousness rejection over John taken with Cheron, Ishihara, or Hanson as it pertains to method claims 1-10, 14(1 and 3-10), 20, and 21, and the obviousness rejection over the admitted prior art in view of John as the latter rejection pertains to method claims 1, 3-10, 14(1 and 3-10), 20, and 21. Claim 1 is the sole independent method claim subject to both of these rejections.

With respect to each of the stated obviousness rejections of method claim 1, the Examiner relies on John for teaching pre-assembly curing of a polysulphide sealant so as to form a film and thereafter placing the cured polysulphide film on a first mating surface and mechanically combining another mating surface to the first mating surface, such as with rivets or bolts, without squeezing out the cured polysulphide film (Ans. 3, 4, 8, and 9).

Independent claim 1 involves a method of assembling components, each having respective mating surfaces, together in a sealed relationship wherein a polysulphide sealant is allowed to cure on at least one of the mating surfaces before the mating surfaces are assembled together. The Examiner seemingly recognizes that John does not teach the claim 1 method step sequence of applying a polysulphide sealant to at least one mating surface, allowing the sealant to cure, and, thereafter, after allowing said sealant (the sealant applied to a mating surface) to cure, bringing together the mating surfaces (Ans. 4-5).

According to the Examiner with respect to the first stated obviousness rejection involving claim 1, Cheron, Ishiara, or Hanson disclose the functional equivalence of providing an adhesive as a film or directly coating at least one mating surface with the adhesive (Ans. 5). In this regard, the Examiner asserts that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the polysulphide sealant as taught by John to at least one of the mating surfaces (or both) by directly coating the sealant (and subsequently curing the sealant) as opposed to providing the sealant as a cured film as both coating the sealant directly on at least one of the mating surfaces and providing the sealant as a film were well taken in the art as functionally equivalent techniques as shown by any one of Cheron, Ishiara, or Hanson wherein directly coating at least one of the mating surfaces with the sealant has the advantage of not requiring a separate step of forming the sealant film.

Regarding the limitation of bringing together the mating surfaces after allowing the sealant to cure, John as modified by Cheron, Ishiara, or Hanson is considered to bring together the mating surfaces after allowing the sealant to cure as John requires the sealant be cured prior to bringing the mating surfaces together otherwise the sealant will squeeze out from

between the mating surfaces preventing an accurate amount of sealant to be applied to effectively adhere and seal the mating surfaces.

Ans. 5.

With respect to the second stated obviousness rejection pertaining to the sole independent method claim (claim 1), the Examiner acknowledges that the relied upon admitted prior art in the Specification is silent about curing a sealant prior to assembling components having mating surfaces (Ans. 8, Spec., p. 1. 9-24). In other words, the Examiner cannot find an admission made in the Specification about that which the Examiner acknowledges the alleged admission to be silent about. The Examiner turns to John and asserts that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to cure the sealant as taught by the admitted prior art prior to contacting the mating surfaces as shown by John to apply an accurate amount of the sealant, prevent the sealant from squeezing out from between the mating surfaces, and effectively adhere and seal the mating surfaces.

Ans. 9.

Aside from arguing improper claim construction of claim 1 and improper reference construction of John by the Examiner with respect to the degree of cure required by the limitation “allowing the sealant to cure” and the degree of pre-assembly sealant cure taught by John, a principal contention of Appellants is that both of the Examiner’s obviousness rejections of independent method claim 1 involve the John reference and John does not teach the claim 1 pre-assembly curing method wherein a

sealant is placed on a component mating surface and allowed to cure thereon (App. Br. 11-13, 15, 16, and 21; Reply Br. 10-11). Similarly, Appellants argue that the Examiner has not established that Cheron, Ishihara, or Hanson, as combined with John in the first obviousness rejection pertaining to claim 1, or the admitted prior art, as employed in combination with John, in the Examiner's second-stated obviousness rejection that pertains to claim 1, reasonably teaches or suggests the above-discussed pre-assembly curing methodology, as recited in claim 1 (App. Br. 13, 16-18, 20-22; Reply Br. 10, 11, 14, and 15).

A principal issue before us is:

Has the Examiner established that John taken with Cheron, Ishihara, or Hanson and/or John taken with the admitted prior art would have taught or suggested to an ordinarily skilled artisan Appellants' claim 1 method, including the step of allowing a polysulphide sealant to cure on a mating surface of a component prior to bringing the mating surface of that component together with the mating surface of another component to form a sealed joint between the mating surfaces of the components?

We answer this question in the negative.

As noted above, John forms a cured polysulphide-containing film, applies the cured film to a component mating surface and then brings the mating surface of another component together therewith. In the aforementioned rejections pertaining to claim 1, the Examiner either does not rely on John for teaching or has not established that John teaches applying a polysulphide sealant to a mating surface, allowing that sealant to cure and then bringing together the component having the polysulphide

sealant cured while on a mating surface thereof together with another component mating surface.

Cheron is directed to a self-adhesive weather stripping seal made of two materials having differing elasticity for use in the rabbets of windows or doors (abstract; pp. 2-4). Cheron discloses that an alternative extrusion seal could be adhered using double-sided tape or hot-melt glue and silicone-treated protective paper (p. 4).

Ishihara is directed to a material for sealing a toner supply aperture wherein, as part thereof, a tackiness or adhesive agent can be applied to a rear surface or top face of a plate wherein the aperture is located or a double sided adhesive tape can alternately be attached to the respective plate surface (abstract; pp. 5-8).

Hanson is directed to a cover for binding sheets, such as sheets of paper, wherein a strip of adhesive can be formed on the backing of the cover by applying a continuous strip of adhesive or by applying adhesive, which has been previously coated on a release liner and applied as a tape to the cover (col. 5, ll. 37-42).

The admitted prior art relates to the use of curable liquid polymers that are applied to a mating surface of an aircraft metallic wing box component using a brush or roller and bringing such components together while the polymer is soft to join the components with a fluid tight seal (Spec. p. 1, ll. 9-24). One disclosed problem with such a liquid sealant application method is that liquid sealant can be squeezed out of bolt holes during bolt tightening (Spec. 2, ll. 8-15).

Concerning the Examiner's first stated obviousness rejection, the Examiner has not reasonably explained how the disparate teachings of any

of Cheron with respect to alternatively adhering weather stripping to windows or doors with double-sided tape or using hot melt glue and release paper, Ishihara with respect to the alternative of using double-sided adhesive tape or an adhesive agent applied to a plate aperture as part of a toner supply aperture sealing technique, or Hanson with respect to using direct application of adhesive or indirectly as a tape to a cover for binding paper sheets would have led one of ordinary skill in the art to any modification of the process of manufacture of a polysulphide sealant film and use thereof in joining aircraft metal components together in a sealed manner, much less suggest a particular modification to John that would result in the process of claim 1.

At best, the Examiner's rejection rationale appears circular in going back to John for suggesting how the mating surfaces would be brought together after allowing the sealant to cure (Ans. 5). This is because John suggests curing a polysulphide sealant on a polyethylene sheet to form a film, which cured film is then adhered to a component mating surface and subsequently brought together and assembled with another component; not curing the sealant after application of the sealant to a component mating surface, as claim 1 requires. Certainly, none of the three secondary references teach curing a sealant on a component mating surface before joining that component to another component to form an assembly of components with a sealed joint between mating surfaces of the joined components.

As for the second obviousness rejection pertaining to independent method claim 1, it is manifest from the discussion above that the Examiner's conclusive observations do not reasonably explain how John taken together

with acknowledged prior art that is either silent about pre-assembly curing, as asserted by the Examiner, or cures a sealant after components are assembled together (post assembly curing), as urged by Appellants, teaches or suggests a modification to John's preassembly curing method that would result in Appellants' materially different pre-assembly curing method.

After all, it is well settled that the Examiner bears the initial burden, on review of prior art or on any other ground, of presenting a prima facie case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). In this case, this initial burden was not met for the stated obviousness rejection because the Examiner's conclusive basis for the rejections falls short of identifying a persuasive rationale that would have led an ordinarily skilled artisan to combine selected features from each reference in a way that would have resulted in a method corresponding to the claimed method.

In this regard, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" being asserted. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (quoted with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)). After all, rejections based on § 103(a) must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

All of the other rejected method claims depend from or through claim 1 and the Examiner does not explain how the other additional references applied against some of the dependent claims in separate obviousness rejections remedy the aforementioned inadequacy in the Examiner's

proposed modification of John based on Cheron, Ishihara, or Hanson or the flaw in the Examiner's combination of the admitted prior art and John.

Consequently, we reverse all of the obviousness rejections as they pertain to the appealed method claims.

Obviousness-Type Double Patenting

Appellants do not present any substantive argument with respect to the Examiner's provisional obviousness-type double patenting rejection (*see generally* Appeal Brief and Reply Brief. Accordingly, we summarily affirm the Examiner's provisional obviousness-type double patenting rejection of claims 22 and 23 over claims 1 and 22 of copending Application No. 11/020,873.

CONCLUSION/ORDER

The Examiner's decision to reject claims 22 and 23 under 35 U.S.C. § 102(b) as being anticipated by John; to reject claims 22 and 23 under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson; to reject claims 22 and 23 under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art (Specification page 1) in view of John; and to provisionally reject claims 22 and 23 on the ground of non-statutory obviousness-type double patenting over claims 1 and 22 of copending Application No. 11/020,873 is affirmed.

The Examiner's decision to reject claims 1-10, 14, 20, and 21 under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson; to reject claims 11-13, 14(11-13), and 15 under 35 U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson, and further in view of Smith; to reject claims 16-19 under 35

U.S.C. § 103(a) as being unpatentable over John in view of Cheron, Ishihara, or Hanson, and further in view of Akmal; to reject claims 1, 3-10, 14(1 and 3-10), 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art (Specification page 1) in view of John; to reject claims 2 and 14(2) under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Lester; to reject claims 11-13, 14(11-13), and 15 under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Smith; and to reject claims 16-19 under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of John and Akmal is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED-IN-PART

PL Initial:
sld

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